CSC Holdings, LLC and Cablevision Systems New York City Corporation *and* Andres Garcia *and* Paul Murray *and* Bernard Paez. Cases 02–CA–138301, 02–CA–138302, and 02–CA–138303

May 11, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On September 23, 2016, Administrative Law Judge Mindy E. Landow issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Parties filed answering briefs, and the Respondent filed reply briefs. The General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified and set forth in full below.[3]

The primary issue in this case is whether the judge correctly found that the Respondent violated Section 8(a)(3) and (1) of the Act by involuntarily transferring employees Andres Garcia, Paul Murray, Bernard Paez, Wayne Roberts, Ezequiel Lajara, and Mike Vetrano because of their union or suspected union activity and/or other protected concerted activity. For the reasons set forth below, we affirm the judge's conclusion.[4]

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, cross-exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the judge's recommended Remedy and Order and substitute a new notice in accordance with our decision in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and to conform to the judge's findings and to the Board's standard remedial language.

[4] We affirm the judge's finding that the allegations regarding Roberts, Lajara, and Vetrano are not time barred under Sec. 10(b). The Respondent transferred them within the 6-month period before the timely charge regarding Garcia, Paez, and Murray, and the allegations are closely related. See *Redd-I*, 290 NLRB 1115 (1988).

Facts

The Respondent provides cable television and communications services at various locations throughout the United States. The six discriminatees worked as outside plant (OSP) technicians at the Respondent's Bronx, New York facility. After an unsuccessful 2012 organizing campaign at the Bronx facility by the Communications Workers of America (CWA) for separate units of OSP technicians and field service (FS) technicians, the Respondent closely monitored its employees for signs of interest in unionization, as reflected by its repeated employee questioning and numerous internal communications.

In June 2013, Supervisor Ewan Isaacs questioned discriminatee Murray about his union activity. Isaacs telephoned Murray, asked where he was working, and drove out to meet him in the field. Isaacs asked Murray "what's up with you and the union?" Isaacs then told Murray that Executive Vice President (VP) of Field Operations Barry Monopoli believed that Murray and discriminatee Paez were "behind all of this." Murray, who was not an open union supporter or aware of organizing at the time, replied, "I don't know what you're talking about."

The Respondent also tracked union sentiments expressed by OSP technicians at meetings held by Human Resources (HR) Director Hector Reyes and HR Manager Gina Grella. In a summary of a June 2013 meeting, Reyes and Grella noted that an employee stated that "the Union is gearing up" and that many wanted to sign authorization cards. In an email to Director of Area Technical Operations Robert Kennedy, Reyes summarized a September 2013 meeting in which employees—after expressing numerous workplace concerns—stated "that they are the reason the Union is not in the Bronx and they want to be recognized and appreciated for their efforts." Reyes' summary was circulated to multiple managers, including Senior VP of HR Paul Hilber, VP of Technical Operations Lou Riley, and Senior VP of Network Management Operations Pragash Pillai.

Some of the discriminatees openly questioned the Respondent's changes to terms and conditions of employment. In late 2013 and early 2014,[5] the Respondent announced that it would cease contributing to the Cash Balance Pension Plan and change the manner in which overtime would be calculated. Discriminatees Murray,

We find it unnecessary to pass on the General Counsel's cross-exception to the judge's failure to find that the Respondent independently violated Sec. 8(a)(1) by involuntarily transferring Garcia, Murray, and Paez. An independent 8(a)(1) violation would be cumulative of the 8(a)(3) finding and would not materially affect the remedy.

[5] All subsequent dates are in 2014 unless otherwise indicated.

Paez, and Garcia discussed these changes among themselves. And at team meetings in March and April, Garcia questioned Executive VP of HR Sandy Kappell at length about the elimination of the pension plan benefit and Murray raised similar concerns to the OSP supervisors.

The Respondent responded to the threat of unionization with mandatory "union awareness" meetings for supervisory and managerial personnel, internal communications, and employee meetings where unionization was discussed. On March 12, Executive VP of Operations Rob Comstock sent an email to the Respondent's official Kristin Dolan and Kappell entitled: "Union Activity—Update," reporting, in relevant part, that:

> [E]mployee mentions of reengaging the union were picked up by management this week and, this morning, "we need the IBEW now" was found written on a whiteboard in the break room. . . . My sense is that the threat is real, coming primarily from a portion of the OSP techs who are the most long tenured employees[6]. . . . Although concerned, Barry [Monopoli] does not feel a union vote would be successful at this point.

That same day, Director of Area Technical Operations Kennedy held a meeting with the OSP technicians in which he stated, "we need to discuss the elephant in the room" as he pointed to the whiteboard bearing prounion messages. Discriminatee Lajara admitted to writing "IBEW" on the whiteboard and explained that he was interested in organizing partly based on safety concerns regarding the assignment of electrical work that the OSP technicians were not certified to perform. Discriminatee Vetrano spoke up in support of Lajara. Kennedy stated that he would "look into" the matter and "develop a procedure," and, as they were leaving the meeting, Kennedy asked discriminatee Murray, "What can I do better?" On March 31, Kennedy emailed VP of Technical Operations Riley regarding a meeting that he and HR Manager Grella held with four of the OSP technicians, including discriminatee Garcia, reporting in relevant part that an employee

> stated that this group was instrumental in keeping the CWA out. They stuck out their necks to tell the F/S techs that the company offered a lot of benefits that are better than the CWA. Now we are taking these benefits away one at a time.
>
> . . . .
>
> Claimed that the group is ready to go to war. They said CWA is not for them but the group is ready to go across the river to Local 3 IBEW.

Murray separately told his supervisor that he intended to contact IBEW Local 3.

In early April, the Respondent held numerous meetings and conference calls with the OSP supervisors regarding employees' union activities. At an April 3 meeting, Kennedy asked the supervisors whether they had "heard anything or seen anything" and one supervisor reported that employee Nicasuis (Nick) Felix was "going around and asking guys if they want to join a union." Later that same day, Executive VP of Field Operations Monopoli held a conference call regarding the Union. At a meeting the next morning led by Reyes, Grella, Kennedy, and Monopoli, the supervisors received an "awareness letter" describing the "dos and don'ts regarding the union" and a letter from Comstock urging employees not to sign authorization cards. The supervisors were instructed to distribute Comstock's letter to employees and report their reactions. Grella, Reyes, Monopoli and other managers held followup meetings with the supervisors later in the day.

Also on April 4, Director of OSP Operations Alex Torres held a meeting with OSP supervisors in which he went through a list of the OSP technicians and asked the supervisors whether each employee would vote yes, no, or was on the fence regarding unionization. The sentiment of each employee was charted, using baseball-themed code words. The list reflects that the prounion employees outnumbered the procompany employees and employees who were on the fence, with 27 prounion employees (listed as Boston Red Sox) versus 9 procompany employees (listed as Yankees) and 16 on the fence employees (listed as Mets). All six discriminatees were identified as prounion/Boston Red Sox.

The Respondent similarly monitored its FS technicians for signs of interest in unionization. For example, in a November 2013 email sent to Managers Monopoli, Grella, and Reyes, FS Director Lester Mahon reported that "[t]he guys are asking questions. I believe some of the usual union promoters are discussing the recent changes . . . ." The Respondent also created a list of the FS technicians using the same baseball-themed code words to describe their union sentiments. However, unlike the OSP technicians, the Respondent believed that the majority of its FS technicians were procompany/Yankees and on the fence/Mets.

On April 23, the Respondent received a letter regarding alleged misconduct by OSP technician Felix, including threatening and physically aggressive behavior. After interviewing approximately 45 other OSP technicians and 5 supervisors, Grella determined that many employees were aware of, witnessed, or had been subject to Felix's inappropriate conduct. Thereafter, the Respondent

[6] The discriminatees were all long-tenured employees.

discharged Felix and his supervisor. However, the Respondent purportedly determined that these actions were insufficient to address the problem of OSP technicians believing that such behavior would be tolerated or that they could not report problems to management. Thus, the Respondent claimed that it decided to transfer three supervisors, voluntarily transfer one of the employees who had reported Felix's misconduct, and involuntarily transfer the six discriminatees. Eight managers were involved in the decision-making process, including two who testified: HR Manager Grella and Senior VP of HR Hilber.[7] They testified that the discriminatees' transfers were nondisciplinary and intended to improve the work environment at the Bronx facility and give the employees a "fresh start." They also claimed that the Respondent considered the transfers' impact on the discriminatees' commutes. However, Grella's notes indicate that the decision makers had selected the discriminatees for transfer by May 5 but had not yet finalized all of the locations to which they would be transferred.

On May 7, the Respondent informed the discriminatees that as a result of the investigation, they were being transferred and were to immediately report to their new work locations.[8] Murray and Paez, who were transferred to Connecticut, explained that they had commuted to the Bronx facility with their spouses and children. The Respondent did not give them any time to make commuting arrangements for their families, and instead required them to immediately vacate the Bronx facility and report to their new facilities in Connecticut. Garcia, who lived 5 minutes from the Bronx facility, complained that his transfer to a facility in Connecticut would result in a much longer commute. Security escorted Murray and Garcia from the premises.

Thereafter, the Respondent denied Garcia's request to leave his truck at the Bronx facility while on stand-by duty. Instead, Director of OSP for the Hudson Valley and Connecticut Region Jeff Stigers told Garcia that he could leave his truck at two other New York facilities that were further from his home. The Respondent also denied Paez' request to return to the Bronx facility to speak with HR about the transfer. Paez' new supervisor Ben Spielman initially permitted him to return to the Bronx facility, but called him while he was driving there and told him that he would have to contact HR in Connecticut instead. Finally, the Respondent denied Paez' subsequent request to transfer to a facility with a more favorable commute. On May 9, Senior VP of HR Hilber emailed HR Manager Grella, Director of Area Technical Operations Kennedy, HR Director Reyes, and VP of Technical Operations Riley regarding Paez' request, and Riley replied, "I don't think we should be giving into these guys they were moved for a reason."

Discussion

Applying *Wright Line*,[9] the judge found that the Respondent knew or believed that the discriminatees engaged in union and/or protected concerted activity. We agree. The Respondent knew that the discriminatees engaged in union and protected concerted activity because they spoke out about the Union and their working conditions to supervisors and at meetings with management who made the transfer decision. For example, in response to questioning by Director of Area Technical Operations Kennedy concerning prounion messages on a whiteboard, discriminatee Lajara admitted that he wrote "IBEW" beneath "We Need a Union Now" and Vetrano spoke up in support of Lajara. Garcia also participated in a meeting led by Kennedy and HR Manager Grella in which a fellow employee stated that "the group is ready to go to war . . . [and] across the river to Local 3 IBEW," and Kennedy shared a summary of that meeting with VP of Technical Operations Riley. Further, Murray told his supervisor that he intended to contact IBEW Local 3, and Supervisor Isaacs told Murray that Executive VP of Field Operations Monopoli believed that Murray and discriminatee Paez were behind the union effort. Additionally, Garcia questioned Executive VP of HR Kappell about the elimination of the pension plan benefit at a meeting led by Kappell and Senior VP of HR Hilber, Lajara and Vetrano expressed concerns about the safety of OSP technicians performing electrical work in lampposts at a meeting led by Kennedy, and Murray raised concerns regarding recent changes to the pension plan benefit to the OSP supervisors. The six discriminatees were also identified by their supervisors as union supporters on Director of OSP Operations Torres' list.

For the reasons that follow, we also agree with the judge that the General Counsel demonstrated the Respondent's animus toward the discriminatees' union and protected activities. That animus is compellingly demonstrated by the fact that the Respondent's involuntary transfers of the six discriminatees flipped the bal-

[7] The other decision-makers were HR Director Reyes, Executive VP of Field Operations Monopoli, Director of Area Technical Operations Kennedy, VP of Technical Operations Riley, Senior VP of Network Infrastructure Pillai, and Senior VP of Field Operations Mike Kaplan.

[8] Paez was transferred to Litchfield, Connecticut; Murray to Norwalk, Connecticut; Vetrano to Mamaroneck, New York; Garcia to Stamford, Connecticut; and Roberts and Lajara to Yonkers, New York. Paez and Murray live in Connecticut; Vetrano lives in New Rochelle, New York; and Garcia, Roberts, and Lajara live in Bronx, New York.

[9] 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

ance of the OSP technicians from a majority of prounion (Red Sox) supporters to a majority of procompany (Yankees) and on the fence (Mets) employees.[10] Before the transfers, there were 27 prounion employees versus 25 proemployer and on the fence employees. After the transfers, there were 20 prounion employees versus 25 proemployer and on the fence employees.[11] These transfers addressed the Respondent's concern, articulated in March by its executive vice president of operations, that the unionization "threat is real, coming primarily from a portion of the OSP techs who are the most long tenured employees."[12] The Respondent therefore acted on its demonstrated concern by diluting union support among OSP technicians to a point at which it believed that a union vote would be unsuccessful.[13] See, e.g., *Temp Masters, Inc.*, 344 NLRB 1188, 1188 fn. 2 and 1193–1194 (2005) (finding discriminatory motive based on transfer of four union supporters soon after respondent learned of union petition), enfd. 460 F.3d 684 (6th Cir. 2006); *Hedison Mfg. Co.*, 249 NLRB 791, 792–793 (1980) (finding discriminatory motive based on imposition of restrictions on transfer of press department employees where respondent identified press department as stronghold of union support and its actions were intended to undermine the organizing campaign), enfd. 643 F.2d 32 (1st Cir. 1981). Further, we agree with the judge that the Respondent's identification of prounion employees as Boston Red Sox (i.e., not part of the home team) is additional evidence of animus. Cf. *Philips Petroleum Co.*, 339 NLRB 916, 924–925 (2003) (finding code words, such as "attitude," constitute evidence of animus).

Additionally, we find that two events that occurred outside the 10(b) period provide background evidence of the Respondent's animus.[14] See *Wilmington Fabricators, Inc.*, 332 NLRB 57, 58 fn. 6 (2000). In June 2013, Supervisor Isaacs interrogated Murray when he asked him "what's up with you and the union?" Although Isaacs was a low-level supervisor and not Murray's direct supervisor, he told Murray during the interrogation that Executive VP of Field Operations Monopoli believed that discriminatees Murray and Paez were "behind all of this." Murray, who was not an open union supporter and was not aware of organizing at the time, denied any knowledge. Additionally, Director of Area Technical Operations Kennedy solicited grievances and promised to remedy them at a March 2014 meeting with the OSP technicians. Kennedy invited employees to discuss their concerns when he stated, "we need to talk about the elephant in the room" as he pointed to the whiteboard bearing prounion messages. After discriminatees Lajara and Vetrano expressed interest in organizing based in part on their concerns regarding the safety of performing electrical work, Kennedy promised to remedy their grievances by saying he would "look into" the matter and "develop a procedure." Kennedy also solicited grievances and implicitly promised to remedy them when he asked Murray "what can I do better?"

In agreement with the judge, we also find strong evidence that the Respondent's proffered reasons for selecting the discriminatees for transfer were pretextual. HR Manager Grella and Senior VP of HR Hilber testified that the transfers were intended to improve the work environment at the Bronx facility and to give the discriminatees a "fresh start." However, many employees told Grella that they had witnessed Felix's misconduct and declined to report it, and some even admitted to engaging in aggressive behavior themselves. Yet, the Respondent transferred only prounion employees, none of whom had engaged in aggressive behavior, and only one of whom (Roberts) even worked the same shift as Felix. And HR Manager Grella told Garcia that his transfer had nothing to do with the Felix investigation. The only other reason proffered by the Respondent for the selection of the discriminatees was their commutes. However, as found by the judge, Grella's and Hilber's testimony was inconsistent, vague, and undermined by the fact that the resulting commutes were more difficult for some of the discriminatees. And, at further odds with its stated purpose, the Respondent transferred discriminatees Lajara and

[10] Notably, the Respondent does not have an involuntary transfer policy, and there is an extremely limited history of prior involuntary transfers. The Respondent's primary example of employees being involuntarily transferred involved the far different circumstance of a site closure on Long Island. Indeed, the record reflects only one involuntarily transferred employee from the Bronx facility since 2011, and the Respondent failed to explain the circumstances of that transfer.

[11] In addition to the six discriminatees, the Respondent voluntarily transferred prounion/Red Sox employee Amerigo Rodriguez.

[12] As noted above, all the discriminatees were long-tenured employees.

[13] There is no merit to the Respondent's contention that if its goal was to dilute union support it would have transferred many more employees because 350 employees work at the Bronx facility. Contrary to the Respondent, the only relevant employees are the OSP technicians. The Respondent stipulated to Board elections in separate units of OSP technicians and FS technicians during the 2012 organizing campaign. Further, based on its close monitoring of employees' union sentiments, the Respondent had determined that a majority of its FS technicians were procompany/Yankees and on the fence/Mets, thus obviating any need to suppress organizing in that potential unit.

[14] The General Counsel filed cross-exceptions to the judge's failure to rely on these events. These incidents were fully litigated because the General Counsel made clear at the hearing that events outside of the 10(b) period would be relied upon as background evidence of animus; the General Counsel was not required to plead these incidents in the complaint as they are not alleged as unfair labor practices.

Roberts to its Yonkers, New York facility when they lived nearer to the Bronx facility, rather than transfer to Yonkers three other employees (identified as procompany/Yankees or on the fence/Mets) who actually resided in Yonkers.

Also undermining Grella's and Hilber's testimony that the transfer decisions were guided by improving the employees' commutes are Grella's notes, which indicate that the Respondent selected the discriminatees for transfer before finalizing the locations to which they would be transferred. Therefore, the Respondent failed to provide a credible explanation for its suspicious decision to transfer the six discriminatees just 1 month after they were all identified as union supporters and in the context of the Respondent's growing concerns about the threat of unionization. See *American Wire Products*, 313 NLRB 989, 994 (1994) ("[T]he Board and the courts have long held that, absent a reasonable explanation, the disproportion between the number of union and nonunion employees laid off or discharged may be persuasive evidence of discrimination.").[15]

Moreover, we agree with the judge that the Respondent's harsh execution of the transfers pointedly contradicts the Respondent's assertion that the transfers were non-disciplinary and nondiscriminatory. The Respondent ordered the discriminatees to immediately report to their new work locations and did not give discriminatees who commuted with spouses and children any time to make alternative arrangements. Moreover, security escorted some of the discriminatees from the premises. After the transfers, the Respondent so thoroughly enforced their exclusion from the Bronx facility that it did not allow Garcia or Paez to return to speak to HR or even to park a vehicle during stand-by duty. Finally, VP of Technical Operations Riley's email in response to Paez' request for a subsequent transfer, stating "I don't think we should be giving into these guys they were moved for a reason," constitutes circumstantial evidence of animus and supports finding that the real reason for the transfers was the discriminatees' union and other protected concerted activities.[16]

Having found that the Respondent's stated reasons for the transfers were pretextual, we agree with the judge that the Respondent failed by definition to meet its rebuttal burden of proving that it would have transferred the six discriminatees in the absence of their protected conduct. See *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003).

Accordingly, we affirm the judge's conclusion that the Respondent violated Section 8(a)(3) and (1) by involuntarily transferring the six discriminatees because of their union or suspected union and/or other protected concerted activity.

ORDER

The National Labor Relations Board orders that the Respondent, CSC Holdings, LLC and Cablevision Systems New York City Corporation, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Involuntarily transferring employees because of a belief that they have or because they have engaged in union or other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[15] We also affirm the judge's drawing of an adverse inference against the Respondent for failing to present testimony from any of the other six managers who, in addition to Grella and Hilber, participated in the transfer decisionmaking process. As the judge explained, Grella and Hilber were "less than persuasive." "[W]hen a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue." *International Automated Machines,* 285 NLRB 1122, 1123 (1987) (internal citations omitted), enfd. 861 F.2d 720 (6th Cir. 1988). Thus, we infer that if the other decisionmakers had been called, they would have further undermined the Respondent's claim that the discriminatees were selected for transfer for a nondiscriminatory reason.

[16] We find it unnecessary to rely on the antiunion views expressed by the Respondent in its internal communications and in Executive VP of Operations Comstock's letter to employees as background evidence of animus. We find that the record amply demonstrates the Respondent's animus for the other reasons stated above. See *Coastal Sunbelt Produce, Inc.*, 362 NLRB No. 126, slip op. at 1 fn. 8 (2015).

Chairman Miscimarra finds merit to the Respondent's exception to the judge's failure to consider whether there was a causal relationship between the discriminatees' protected conduct and the Respondent's transfer decision. In *Wright Line*, the Board stated that the General Counsel must make "a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision." 251 NLRB at 1089. Thus, under *Wright Line*, the General Counsel must establish a link or nexus between the employee's protected activity and the employer's decision to take the employment action alleged to be unlawful. See *Tschiggfrie Properties, Ltd*, 365 NLRB No. 34, slip op. at 1 fn. 1 (2017) (collecting cases). Applying this standard, however, Chairman Miscimarra finds the General Counsel made the requisite prima facie showing required under *Wright Line* in this case.

Contrary to the suggestion of their colleague, Members Pearce and McFerran note that "proving that an employee's protected activity was a motivating factor in the employer's action does *not* require the General Counsel . . . to demonstrate some additional, undefined 'nexus' between the employee's protected activity and the adverse action." See *Libertyville Toyota*, 360 NLRB 1298, 1301 fn. 10 (2014) (collecting cases), enfd. sub nom. *AutoNation, Inc. v. NLRB*, 801 F.3d 767 (7th Cir. 2015).

(a) Within 14 days from the date of this Order, offer Paul Murray, Bernard Paez, Mike Vetrano, Ezequiel Lajara, and Wayne Roberts transfers to their former jobs at the Brush Avenue facility, or if those jobs no longer exist, to substantially equivalent positions at the Brush Avenue facility, without prejudice to their seniority or any other rights or privileges previously enjoyed. Should Andres Garcia wish to apply for employment with the Respondent, he should be offered the opportunity to apply for employment at the Brush Avenue facility.

(b) Make Garcia, Murray, Paez, Vetrano, Lajara, and Roberts whole for any increased commuting or other expenses suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision, as modified in this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful transfers, and within 3 days thereafter, notify the employees in writing that this has been done and that the transfers will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Bronx, New York facility copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 7, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. May 11, 2017

Philip A. Miscimarra,	Chairman
Mark Gaston Pearce,	Member
Lauren McFerran,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT involuntarily transfer our employees because they engage in or we believe that they engaged in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Paul Murray, Bernard Paez, Mike Vetrano, Ezequiel Lajara, and Wayne Roberts transfers to their former jobs at the Brush Avenue facility or, if those jobs

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

no longer exist, to substantially equivalent positions at the Brush Avenue facility, without prejudice to their seniority or any or rights or privileges previously enjoyed. Should Andres Garcia wish to apply for employment, we will offer him the opportunity to apply for employment at the Brush Avenue facility.

WE WILL make Garcia, Murray, Paez, Vetrano, Lajara, and Roberts whole for any increased commuting or other expenses suffered as a result of our unlawful involuntary transfers, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful transfers of Garcia, Murray, Paez, Vetrano, Lajara, and Roberts, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the transfers will not be used against them in any way.

CSC HOLDINGS, LLC AND CABLEVISION SYSTEMS NEW YORK CITY CORPORATION NEW YORK CITY CORPORATION

The Board's decision can be found at https://www.nlrb.gov/case/02–CA–138301or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Rachel F. Feinberg, Esq. and *Nicole Oliver, Esq.,* for the General Counsel.

G. Peter Clark, Esq. and *Kenneth A. Margolis, Esq. (Kauff, McGuire & Margolis, LLP),* of New York, New York. for the Respondent.

STATEMENT OF THE CASE

MINDY E, LANDOW, Administrative Law Judge. Pursuant to charges filed by Andres Garcia, Paul Murray, and Bernard Paez against CSC Holdings, LLC and Cablevision Systems of New York City Corp. (Respondent) as a single employer on October 6, 2014,[1] all of which were amended on November 6 and the first of which was again amended on March 16, 2015.[2]

On May 29, 2015, a Consolidated Complaint and Notice of Hearing (complaint) was issued by the Regional Director, Region 2. The complaint was amended by Order on August 25, 2015. The complaint as amended alleges that Respondent (also referred to as Cablevision or the Company) violated Section 8(a)(3) and (1) of the Act by its involuntary transfer of the three Charging Parties (named above) and employees Vetrano, Lajara and Roberts because they supported Local 3, IBEW (Union) or because Respondent believed that they supported the Union. The complaint further alleges that Respondent transferred the employees in violation of the Act because they engaged in protected, concerted activity by discussing their working conditions among themselves and with Company management.

Respondent filed an answer to the complaint and the amended complaint denying most of the material allegations set forth therein. In addition, Respondent denied the agency status of the following admitted supervisors: Chief Executive Officer James Dolan; Senior Vice President of Human Resources Paul Hilber; Executive Vice President of Operations Rob Comstock; Senior Vice President of Network Management and Operations Prigash Pillai; Director of Area Technical Operations Robert Kennedy; Director of Outside Plant Operations (OSP) Alex Torres; Bronx Field Operation Supervisors Donovan Reid, Jason Vanderbilt and Ewan Isaacs and Human Resources Manager Gina Grella.

This case was tried before me in New York, New York, on September 22, October 20 through 22, and November 9 and 10, 2015.

On the entire record, including my observation of the demeanor of the witnesses,[3] and after considering the briefs filed by the General Counsel and the Respondent I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in providing cable television and communications services in various locations throughout the United States and maintains executive offices located at 1111 Stewart Avenue, Bethpage, New York. Annually, Respondent derives gross revenues in excess of $500,000 and, in the course

[1] Except as otherwise noted, all dates refer to the year 2014.

[2] The amended and second amended charges were omitted from the formal papers. Counsel for the General Counsel requested their admittance into the record by letter dated December 16, 2015, without objection from Respondent. These documents are hereby admitted into the record. As will be discussed in further detail below, the second amended charge in Case 02–CA–138301 added the involuntary transfers of employees Wayne Roberts, Ezequiel Lajara, and Mike Vetrano as violations of Sec. 8(a)(1) and (3) of the Act.

[3] My credibility resolutions herein are based upon context, demeanor, weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences drawn from the record as a whole. *Double D. Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. 56 Fed.Appx 516 (D.C. Cir. 2003). Moreover, while every apparent or nonapparent conflict in the evidence may not have been specifically resolved below, my findings are based upon the factors described above. Accordingly, any testimony which is inconsistent with or contrary to my findings should be deemed discredited.

and conduct of its business operations purchases and receives at its New York City facilities goods and services in excess of $5000 directly from suppliers located outside the State of New York. Respondent admits that for purposes of this proceeding CSC Holdings LLC and Cablevision Systems New York City Corp. are a single employer within the meaning of the Act, and I so find. I further find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act

I take administrative notice that Local 3, IBEW has been found to be and is a labor organization within the meaning of Section 2(5) of the Act.[4]

II. ALLEGED UNFAIR LABOR PRACTICES

Corporate and Supervisory Structure

Respondent operates depots throughout New Jersey, Connecticut, Long Island and New York City, an area referred to as "the footprint." Network operation services for New York City are provided out of several depots including 500 Brush Avenue, located in the Bronx. This facility includes field service (FS) and outside plant (OSP) departments. The Charging Parties and other employees named in the complaint operated from the OSP department at the Brush Avenue facility.

At relevant times, Gina Grella was the human resources (HR) manager at the Brush Avenue facility. She reported to Human Resources Director Hector Reyes. Reyes reports to director of outside plant operations, Alex Torres. There are a number of other supervisory and managerial personnel set forth in the complaint or as otherwise will be discussed in testimony. Some of the managers most directly involved in the instant matter are: Senior Vice President of Human Resources Paul Hilber; Executive Vice President of Human Resources Sandy Kapell and Director of Area Technical Operations Robert Kennedy. Grella, Torres, and Kennedy are situated at the Brush Avenue depot. Hilber and Kapell work from the Company's corporate headquarters in Bethpage, Long Island and have oversight for various locations within the footprint. Pragash Pillai is the Senior Vice President of Network Infrastructure and Jeff Stigers is the director of OSP for the Hudson Valley and Connecticut Region. Barry Monopoli is the Executive Vice President of Field Operations. Other supervisory and managerial personnel will be identified, as necessary, below.

The Witnesses

The witnesses who testified in this proceeding for the General Counsel were Charging Parties Murray, Paez, and Garcia, current employee Melvin Encarnacion, and former supervisor, Donovan Reid. Vetrano, Roberts and Lajara did not testify. Grella and Hilber were called to testify for the General Counsel pursuant to FRE 611(c) and they additionally were called by, and offered testimony on behalf of Respondent. Also testifying for Respondent were Brush Avenue Supervisor Jason Vanderbilt and director of OSP for the Hudson Vey and Connecticut Region Stigers.

The OSP Work Force

Approximately 350 employees work out of the Brush Avenue depot. As of about May, there were about 40 OSP technicians, including the six that are at issue here, who were all employees of significant tenure with the Company. Roberts worked the night shift, from 12 until 8:30 a.m.; Murray, Paez, Lajara, and Vetrano all worked the day shift, from 8 a.m. until 4:30 p.m. and, at the time of his transfer, Garcia worked the mid-shift, from 4 p.m. to 12 a.m. Another OSP technician, Nicasuis (Nick) Felix, an OSP technician whose employment status is not directly at issue here, but will be discussed below, worked the night shift. The supervisors overseeing OSP employees at relevant times were: Andel Brady, Alejandro Carasquillo, Donovan Reid (until May 6, 2014), Jason Vanderbilt, Ewan Isaacs, and Michael Mollica, the night supervisor. The supervisors would rotate responsibility for making work assignments, but each supervisor had a team assigned to them for purposes of annual evaluations.

The Brush Avenue facility has a so-called "tech room" where employees would report at the beginning of their shifts to collect their work assignments. According to both Murray and Paez, employees would remain in the tech room for an overlapping period of time, perhaps as long as 30 minutes, during contiguous shifts at which time they might discuss various work-related and personal issues. The supervisors have offices in the tech room, and there is testimony to the effect that they generally keep their office doors open, so may have occasion to overhear discussions which may occur; but there is no specific evidence that this would have or did occur regarding the allegations set forth in the complaint.

Prior Organizing Attempts at Brush Avenue

In early 2012, the Communication Workers of America (CWA) began an organizing effort at the Brush Avenue depot. Initially two separate stipulated election agreements were entered into: one seeking a unit of FS technicians and the other a unit of OSP technicians. This latter petition was subsequently withdrawn and on June 28, 2012, the FS employees voted against representation by the CWA by a significant margin. This election took place after the CWA had successfully organized a unit of employees at Cablevision's Brooklyn facility.

Shortly after the Brooklyn election and prior to the Bronx election, Respondent's Chief Executive Officer (CEO) James Dolan conducted a mandatory telephone conference with employees at various Cablevision facilities. During this conference, Dolan stated that he understood that there were problems in the employees' working environment and that he intended to make changes. During a follow-up teleconference held several months later, Dolan announced changes to employee compensation. Thus, in May 2012, employees received wage increases: according to Murray and Paez, these raises were significantly greater than those which had been previously received based upon annual evaluations.

[4] See, e.g., *Electrical Workers Local 3 (Atlas Reid, Inc.)*, 170 NLRB 584 (1968); *Eugene Iovine, Inc.*, 353 NLRB 400 (2008).

Meetings with Employees in 2013[5]

In June and July 2013, Human Resources (HR) Director Reyes and HR Manager Grella held "Meet and Greet" sessions with the OSP technicians at 500 Brush Avenue. After an initial presentation regarding the benefits of employment with Cablevision, Reyes encouraged employees to ask questions. Some of the topics raised included ambiguity about career progression; unhappiness about the shift selection process; a perceived lack of communication from management and dissatisfaction with how the HR team had operated in the past.

A meeting held on June 17, 2013, with employees and various supervisors was described as "the most vocal," and covered topics such as the role of HR and whether complaints would be kept confidential; a perceived lack of respect from supervisors and managers; the desire for updated training and the possibility of getting additional certifications; uncertainty about the requirements for career progression; the procedures for shift selection; the need for new tools in the field; safety procedures and certain friction over job assignments with the field service technicians. Under a section entitle: "Union," it was noted that one tech reported that the union was gearing up and a lot of people don't want to say what is happening but say that they want to sign a card. It was noted that the group of techs were divided on this issue, with two stating that they did not want to sign a card for a union.

In September 2013, HR Director Reyes wrote a memorandum summarizing a meeting that he, along with Grella, held as had been requested by the OSP technicians. The techs had requested that no members of management be present. As Reyes noted, "[t]heir main concerns harkened back to our Meet and Greet with the team in June and July. . ." Concerns included procedures for requesting vacation resulting in lesser flexibility; a variety of safety issues and a perception of a lack of trust and respect from supervisory and managerial staff. In this regard, Reyes reported, "all of the items discussed above have driven the techs to feel as if they are not trusted or respected by their supervisors and managers. They have gone so far as to attach these changes and feelings specifically to [OSP Director] Alex Torres. They stated that they are the reason the Union is not in the Bronx and they want to be recognized and appreciated for their efforts. They are "demanding" something be done to address their concerns." This summary was circulated, between September and November 2013, to VP of Technical Operations Riley, Director of Area Technical Operations Kennedy, and Senior Vice President of Network Management Operations Pillai.

Murray testified that in June 2013, as he was working in the field, he received a call from OSP Supervisor Isaacs asking where he was working. According to Murray's testimony, Isaacs met him at his work location and asked him what was up with him and the union. As Murray testified Isaacs went on to say that Barry Monopoli said that Murray and Paez were behind "all of this."

[5] Although this evidence is outside of the 10(b) period, I find it appropriate to rely upon it as background to the events under allconsideration here. See, e.g., *Coastal Sunbelt Produce, Inc*., 362 NLRB No. 126 slip op. at 2–3, 29(2015).

Changes to Terms and Conditions of Employment

In November 2013, Brush Avenue employees received a memorandum informing them that, as of January, Respondent would cease contributing to a program referred to the Cash Balance Pension Plan, which was considered by employees to be a benefit.

On November 16, 2013, Field Service Director Lester Mahon sent an email to Monopoli, Grella, and Reyes entitled: "The memo and the questions?" and providing, in part, as follows:

> The guys are asking questions. I believe some of the usual union promoters are discussing the recent changes, especially the freezing of the pension plan. I've already been asked if Cablevision will be taking away Christmas bonuses.

Thereafter, in early 2014, changes were announced as to the manner overtime would be calculated; in particular, that sick leave and vacation time would no longer be included in the formula to determine eligibility.[6] The employees who testified asserted that they viewed the foregoing changes as detrimental and they were unhappy about them.

Certain employees, including Murray, Paez, and Garcia discussed the changes among themselves and Murray testified that he lodged a complaint with Supervisor Reid and his own supervisor, Andel Brady, during an April team meeting.

Evaluations of Employee Sentiment in 2014

On March 12, 2014, Executive Vice President of Operations Rob Comstock sent an email to Cablevision official Kristin Dolan and Sandy Kapell entitled: "Union Activity—Update," providing, in relevant part, as follows:

> We've had some Union related activity this week in Newark and the Bronx.
>
> In Newark, IBEW representatives came on to our property in an effort to engage our employees. They were politely asked to leave by FS Management before they were able to strike a conversation with techs, which they did without incident. According to Charlie and Kevin (RVP and AOM), this was a typical recruiting/canvassing effort and totally unsolicited. We'll stay close to see if we pick up any buzz.
>
> In the Bronx, employee mentions of reengaging the union were picked up by management this week and, this morning, "we need the IBEW now" was found written on a whiteboard in the break room. After my tour of Soundview, I stopped by the Bronx depot and spent some time with Barry and the team. My sense is that the threat is real, coming primarily from a portion of the OSP techs who are the most long tenured employees there and not thrilled about being managed based on performance. Although concerned, Barry does not feel a union vote would be successful at this point.

The foregoing memorandum apparently makes reference to a meeting Kennedy had called of OSP technicians and supervisors. Murray, Paez, and Reid, who were present, testified that Kennedy had gestured toward the whiteboard which bore the

[6] At least, that is the record testimony regarding this matter. It is otherwise unexplained.

following messages: "IBEW" and "We need a Union Now" and stated that "we need to discuss the elephant in the room." Lajara stated that he had written "IBEW" on the Board. Lajara went on to state that the OSP technicians were being asked to perform electrical work—specifically going into lampposts in the field—that they were not certified to perform. Vetrano, also present, supported Lajara. Kennedy stated that he would look into the issue and come up with a procedure for dealing with lampposts. Murray testified that, as he was leaving the building, Kennedy approached him and asked him what he could do better. Murray responded that he felt the problem was at a corporate level.

Murray testified about a meeting held at a March 2014 meeting led by Hilber and Kapell, where Garcia questioned Kapell at some length about the elimination of the Cash Balance benefit.[7] Kapell ended the discussion stating that she was not going to argue with him about it.

Sometime about mid-March, Respondent held mandatory "union awareness" meetings for supervisory and managerial personnel throughout the footprint. Reid testified that he attended one such meeting, held on March 20, at the Radisson Hotel in New Rochelle, located in Westchester County. Also attending were Director of OSP Torres, OSP Supervisor Brady and Audit Supervisor Carasquillo. The meeting lasted for 5 hours and was conducted by an attorney.

On March 31, Kennedy sent an email to Vice President of Technical Operations Lou Riley entitled: "recap of 4 p.m. OSP meeting," providing as follows:

> We met with 4 techs from the mid-shift and Gina Grella at 4pm. We had a lot of questions to clarify the policy. We used the white board to demonstrate multiple shift scenarios. They had some concerns that we addressed. Once again, the following came up in the initial conversation.
> Why is this being done?
> Is this to limit OT/DT?
> Will overtime be available to me on my first day off so that I am eligible for DT on my second day off?
> If I work a Monday to Friday shift is the Sunday before my shift my first day off and the Saturday after my shift the DT day or is Saturday my first day off and the following Sunday, my DT day?
> About 4:30 Gina had to leave for another meeting. After Gina left the meeting the techs began to speak more freely.
> Amerigo Rodriquez was visibly upset. He stated that this group was instrumental in keeping the CWA out. They stuck their necks out to tell the F/S techs that the company offered a lot of benefits that are better than the CWA. Now we are taking these benefits away one at a time.
> 20 year Lifetime Cablevision
> Cash Balance—Pension Plan
> Benefits – more money less coverage
> OT/DT
> Claimed that the group is ready to go to war. They said the CWA is not for them but the group is ready to go across the river to Local 3 IBEW.
> I asked if the issues were just from the OSP and [they] said no F/S us just as unhappy and their main complaint is having to do installs.
> They stated that Kip Mayo gave a presentation on the 401K plan the [sic] showed them after 20 years they would have 2 million in the plan. They have been in the plan for a while and only have $100,000 and that is more than most techs.
> Techs that attended:
> Amerigo Rodriguez
> Andres Garcia
> Jose Irizarry
> Craig Banks

On April 3, Senior Vice President of Field and Network Operations Mike Kaplan received an email from Tom Monaghan reporting on a conversation Monaghan had with a group of 10 OSP technicians regarding Respondent's changes to benefits and overtime. In part, the email states that the 10 techs, characterized as "good guys," stated:

> They feel betrayed by Jim Dolan—as when the campaign/election was occurring, he said to them—"please give me another chance—we'll make things right" which was followed with changes in cable benefit, freezing of the cash balance plan and most recently, the change in overtime.
>
> > The frustration is coming from OSP—as they felt like they were the major players in turning around the FS techs from the union— specifically in getting the red bands off their wrists—and replacing them with blue/black Cablevision bands – meaning they were 'company guys'—and were key players in helping the company win. Now they have the 'pro union' supporters from FS laughing at them—telling them 'we told you so.'

The email goes on to state that the techs stated that they were not sure what is next and that the "company" OSP techs feel that Cablevision has turned its back on them and that they are not valued anymore from a leadership position in the shop.

Former OSP Supervisor Reid testified about meetings and conference calls held on April 3 and 4 at the Brush Avenue depot regarding union activity at that facility. On April 3, Reid attended a meeting of all of the daytime OSP supervisors conducted by Director of Technical Operations Kennedy. Kennedy discussed technical matters relating to the OSP operation and then asked whether anyone had "heard anything or seen anything?" Supervisor Carasquillo stated that he had heard that Felix "is going around asking guys if they want to join a union." Later that day, Reid was instructed to attend a conference call with Executive VP of Field Operations Monopoli, which he participated in from Supervisor Vanderbilt's office. The topic of discussion was the Union. Thereafter, Reid was informed that there would be a meeting at 7:30 a.m. o the following morning. This meeting was held in the main conference room at Brush Avenue. Also present were Supervisors Brady and Isaacs, Director of Human Resources Reyes, Human Resources Manager Grella, Director of Area Technical Operations Kenne-

[7] Garcia's recollection was that this meeting occurred in about November 2013; however, Garcia and Murray's recollection of the content of the exchange with Kapell is similar, and I find that it occurred at the time attested to by Murray, absent any rebuttal by Respondent.

dy and Monopoli.

Grella gave the supervisors two documents: one was a letter from executive Vice President of Operations Comstock urging employees not to sign authorization cards for Local 3 IBEW. This letter, among other things, stated that Cablevision has "been told union organizers from the International Brotherhood of Electrical Workers (IBEW) may have been approaching Cablevision employees in the Bronx about signing union authorization cards." The letter goes on advise employees that such cards are binding legal documents which are enforceable during the life of a union's organizing drive; that by signing a card employees may forfeit their right to vote in a secret ballot election; that there are no automatic improvements just because someone signs a card; that signing a card could "expose you to the risks of collective bargaining"; that employees could end up with the same or less as a result of good-faith negotiations and that unions such as the IBEW have lost thousands of members and "would like nothing more than [improving] their finances by getting your union dues." The letter concludes by stating "*we urge you not to make a commitment to a union which you may later regret, based solely on the union's propaganda*" (emphasis in original). It has not been alleged that any of the statements set forth in this letter are unlawful.

The other document was an "awareness letter" addressed to supervisors setting forth "dos and don'ts regarding the union." Reid testified that Monopoli stated that he had been brought there for this type of situation and told Supervisor Isaacs that he needed to talk to Felix because the guys did not know what they were doing. The supervisors were instructed to distribute the Comstock letter to their teams and report back with their reactions. Grella, Reyes, Monopoli, and other members of management met with the supervisors in groups later that day to hear reports regarding their discussions with team members.

Later that day on April 4, Reid was called into a meeting with the Director of OSP Torres and the other supervisors, except for Vanderbilt. Torres explained that the purpose of the meeting was to ascertain whether, if the election were to be held that day, where everyone stood: i.e. who was a "yes," who was a "no" and who was on the "fence". Torres went through a list of OSP technicians and asked the supervisors to identify procompany employees as "Yankees," prounion employees as "Red Sox" and those on the fence as "Mets." In all, the supervisors identified 27 "Red Sox," 9 "Yankees" and 16 "Mets." The prounion supporters included Murray, Paez, Garcia, Lajara, Roberts, and Vetrano.

On April 21, an employee named James Jones sent an email to CEO James Dolan complaining of issues that were "negatively affecting" the [Bronx OSP] department. Among other things Jones complained of a decline in morale; unfair treatment of some team members and lack of communication. The email additionally made favorable reference to a prior visit by Kapell:

> A few weeks ago we were fortunate to have had Miss Sandy Kapell visit us, that was so good to have some one from the corporate office visiting us, but I think an immediate solution could be to rotate the personnels (this seems to be the general sense) that had brought with them it would seem the same methods that had push the workforce in Brooklyn to bring in an outside group in the form of a union to help them.

A copy of this communication was sent to Kapell, Pillai, Hilber, and Rob Comstock who agreed to schedule visits to the Bronx based upon a promise that had made to employees that they would visit regularly.

As all this was occurring, sometime in March, Murray and Felix decided to contact the Union. Murray made a call, there was no answer and he left a message. Murray testified that he attempted to reach the Union on several other occasions but never spoke with anyone from the IBEW. He further testified that he had an informal meeting with several other employees to discuss arranging a meeting with the Union. Former OSP Supervisor Reid testified that Murray informed him that he intended to "reach out to Local 3 IBEW." Ultimately, Murray's attempts to contact the Union proved to be unsuccessful.

Harassment Allegations and Cablevision's Investigation

On April 23, two OSP Technicians, Amerigo Rodriguez and Derrick Gill, hand delivered a letter of complaint drafted by attorney Robert Laureano to Regional VP for Field Operations Monopoli and Regional Director of Outside Plant Department Kennedy. The letter asserted that Laureano was writing on behalf of a few anonymous employees who had been subject to threatening and physically aggressive behavior by OSP Technician Nick Felix. In particular, it was claimed that Felix had engaged in:

> Punching an employee in the ribs and shoulder area, forcefully jabbing his two fingers in the torso and rib area of another [employee], physically picking up a supervisor off the ground by grabbing him below the waist and placing another employee in a chokehold causing him to gasp for air.

The letter concluded by saying that Felix's actions were "not isolated and have created an 'unsafe and hostile work environment. . .'" and demanded that Cablevision "take . . . immediate and swift action before . . . [a] tragedy occurs. . ."

The letter was forwarded to Grella who, in in turn discussed it with Hilber. Felix was suspended pending an investigation and Hilber instructed Grella to investigate the allegations. Grella therefore scheduled interviews with employees and supervisors in the Bronx OSP Department and beginning on April 24, Grella interviewed approximately 45 OSP technicians and 5 supervisors asking questions and taking notes on their responses to a series of questions drafted with input from Hilber concerning threatening or aggressive conduct witnessed or directly experienced by them in the workplace. As Grella testified, many of the employees she spoke with were aware of, witnessed or had been subject to inappropriate conduct on the behalf of Felix. In sum, over half the individuals interviewed reported either being direct victims of Felix's verbally and physically aggressive conduct or witnessing such conduct. Several employees told Grella that they had observed or experienced Felix engage in inappropriate physical or intimidating conduct including placing employees and Supervisor Reid in a choke hold, aggressively poking an employee in the chest and ribs with his fingers, and picking up Reid and slamming him into a wall. One employee reported an incident where, after

spilling ink on his pants, Felix began punching walls and kicking garbage pails. Employees specifically named by Grella included Antonio Rosado, Amerigo Rodriguez, Derrick Gill, Andres Garcia, (Supervisor) Donovan Reid, Tanesha Mozon, and Carmelo Acevedo.

Other employees reported that they heard that Felix had brought a machete to work and threatened another employee with it. A machete was found in Felix's Cablevision vehicle when it was searched. Another employee claimed that Felix had shown him a gun, and there were rumors to such effect. Felix allegedly also had a confrontation with a female employee, consisting of jabbing her in the ribs, slamming her desk, and cursing and yelling at her, causing a security guard to investigate the situation. Grella was told that Reid, and other supervisors, were aware of Felix's behavior but had done nothing to correct it due to their personal relationships with him. In particular, Reid told Grella that Felix had picked him off the ground, slammed him into a wall in front of other employees and placed him a choke hold. Reid acknowledged he had a personal relationship outside of work and characterized Felix's behavior as horseplay.

Murray and Paez both had interviews which, according to their testimony, were short in duration. This is confirmed by the notes Grella took while speaking with them. Paez told Grella that he did not recall any recent incidents, and Murray reported that he had witnessed horseplay but not to the extent of it being a problem. He additionally reported witnessing profanity. Garcia recorded his meeting with Grella and it was significantly longer than those reported by the other Charging Parties. Garcia described two incidents with Felix in or about the summer of 2013, shortly after he transferred to the night shift. He described how Felix placed him in a choke hold and he further described a heated argument in the field that had prompted him to request a transfer back to the mid-shift, where he had previously worked.

Grella asked Garcia generally whether he felt that the HR department had failed to be responsive to other situations he had brought to their attention. Garcia responded that HR had failed to respond to his request that he be moved to a position that would not require him to drive or be up at heights on a ladder or in the bucket of a truck due to an ongoing vertigo condition. Grella mentioned that an inside plant position in the Bronx would be coming available in a few weeks and there was a current opening in New Jersey. Garcia replied, "I've been [in the Bronx] my entire career and would like to die here." Garcia also indicated, however, that he was interested in a position in Stratford, Connecticut in an "inside department" which did not require driving, climbing ladders or getting into the bucket of a truck.

Grella testified that at the conclusion of her investigation she reported her findings and recommendations to Company counsel and members of upper management. It was decided that Felix and Reid would be discharged Supervisors Isaacs and Brady were issued final warnings for their failure to address the situation and were transferred to Huntington Heights, NY and Bethpage, New York, respectively. A third supervisor, Mike Mollica, had already applied for a transfer and left the Bronx depot in June. Supervisor Vanderbilt was given additional training through a Development Plan to improve the performance of his supervisor duties. In addition, Amerigo Rodriquez, one of the most vocal victims of Felix's aggression, was voluntarily transferred to Wappinger's Falls, New York.[8]

In addition, Cablevision involuntarily transferred the six technicians named in the complaint. Paez was transferred from Brush Avenue to Litchfield Connecticut; Murray was transferred to Norwalk, Connecticut; Vetrano was transferred to Mamaroneck in Westchester County; Garcia was transferred to Stamford, Connecticut and Roberts and Lajara were transferred to a depot in Yonkers, New York. Generally, Grella testified that the involuntary transferees were selected through a series of conference calls by a group of people that included herself, Director of HR Reyes, SVP of HR Hilber, VP of Field Operations Monopoli, Director of Area Technical Operations Kennedy, VP of technical Operations Riley, Senior VP of Field Operations Kaplan and Senior VP of Network Management and Operations Pillai. By May 5, the identities of those selected for transfer were known but the locations to which they were to be transferred had not been finalized.

As a general matter, Respondent argues that the two terminations, that of Felix and Reid, were insufficient to address the problems in the Bronx OSP in that they would not address employee perceptions that such behavior would be tolerated or that they could not report such problems to management. In this regard, Cablevision has a Harassment Prevention Policy and another entitled "Sexual and Other Harassment and Discrimination are Prohibited." As Respondent argues, the transfers of the seven technicians and three supervisors both altered the Bronx OSP workforce and gave the transferred employees a "fresh start" at other locations.[9]

Hilber testified that the decision to involuntarily transfer the six OSP technicians was prompted by the conclusion that:

> In general terms we've found this really bad behavior taking place, especially with Nick Felix. But there's an overall theme within OSP as a whole that the department had sort of detonated, for lack of a better phrase. They were managing their own culture and taking their own course of actions without engaging the appropriate channels within the business.

With regard to the specific decision to transfer the OSP techs, Hilber testified:

> The overall environment within the OSP Team in the Bronx was—these are my words—disgraceful. The—I used the phrase before—people went sort of native and they were making their own decisions. The lack of—the complete acceptance of events, coercion, physical intimidation was—as far as I'm concerned—out of control and we needed to take

[8] Rodriguez, one of the employees who delivered the original complaint in the April 23 letter, had asked to be transferred out of the Bronx during the investigation. However, Cablevision subsequently denied his request to be returned to the Bronx.

[9] There is a limited history of involuntary transfers among Cablevision facilities. For example, when a site was closed on the East End of Long Island, employees were moved to other locations. In addition, Vanderbilt testified that he had been involuntarily transferred from Bethpage to Freeport.

serious actions because we needed it.

In response to a question from Respondent's counsel, Hilber testified that he "absolutely" did not consider the transfers to be disciplinary measures. He continued:

> [w]e had a work group that needed to be broken up. People needed to get an opportunity to—and I've used the phrase in the past—to get a fresh start, not as it relates to our Fresh Start Program, but fresh start, a clean page to start anew and recognize that sometimes when you're in a group environment with employees you need to change the dynamic and quite frankly the people to start thinking differently and managing through our policies and our values.

Hilber testified that he participated in the decision about where employees would be transferred "to some extent," and stated generally that Respondent didn't want to compel techs to cross bridges so they looked at Cablevision facilities in the Hudson Valley and Connecticut. Cablevision further considered those areas where there was work, and where the headcount could be absorbed, and where the commute would not be overly burdensome. Grella testified that there was "not really a specific conversation that was focused on who lives where per se. It was part of the conversation, but it wasn't that we mapped out the entire department." When asked how the Company identified those addresses that they would check, Grella replied, "We looked at everyone's addresses. We looked at everyone's address from the perspective of—I'm fairly certain from the Bronx to their home. I don't know—I don't believe we looked at everyone—well, I know we didn't look at everyone, it was impossible, from their home to every location that we would have transferred people."[10] According to Hilber, other management personnel participating in the decision to transfer the OSP technicians were Director of Area Technical Operations Kennedy and VP of Technical Operations Riley in consultation with Director of OSP-Hudson Valley Jeff Stigers and SVP of Network Management and Operations Pillai.

Hilber testified that Paez was transferred to Litchfield to "reduce his commute" and that Murray was transferred to Norwalk because he is "from Connecticut. So it wasn't going to be a hardship from the commute perspective." Vetrano and Garcia were originally transferred to Yorktown but then reassigned, Vetrano to Mamaroneck due to childcare requirements and Garcia to Stamford because he had previously informed Grella he would be willing to go to that location. Hilber testified that Roberts was transferred Yonkers because he would have a reverse commute to his home in the Bronx.[11]

Hilber also offered some testimony as to why other technicians were not transferred. Acevedo was on a leave of absence due to medical issues; Melendez was in the process of seeking a transfer to another location and Melvin Encarnacion was not considered because technically he was assigned to another department and thus not considered to be a part of the "OSP environment."

The Employee Transfers and Subsequent Events

On May 7, a meeting was held for all OSP technicians at the Brush Avenue facility. Management present included Pillai, Riley, Monopoli and Torres. Technicians were advised that as a result of the investigation, there were certain personnel changes in the offing: in particular, certain terminations and transfers of employees.

At the conclusion of this group meeting, employees were called into individual meetings conducted by Grella, Hilber, Pillai, Kennedy, and other members of management.

Melvin Encarnacion, called as a witness by the General Counsel, testified that he met with Hilber and Pillai in Kennedy's office. Encarnacion had expressed a preference for a transfer to Connecticut, as he resides there. He was not transferred. Encarnacion testified that Pillai told him he "was one of the good guys," although Hilber denied that Pillai made such a comment in his presence.[12]

Murray and Paez both met, individually, with Hilber and Pillai. Murray testified that Pillai told him that he was disappointed things that had been going on in the department, and that none of this had been brought up before. Murray recalled Pillai stating that more than half the department members were afraid to come to work. Hilber told Murray he was being transferred. First, he inquired whether Murray lived in Bridgeport. Upon receiving an affirmative answer, he handed Murray a paper containing the name of his new supervisor and was informed that henceforth he would be reporting to Norwalk. Murray asked why he was being transferred and Hilber replied that they were giving everyone a fresh start. Upon realizing that he was being asked to leave the facility immediately, Murray mentioned his wife and son, with whom he commuted from Connecticut and complained that he was not being given an opportunity to make arrangements. Murray was instructed to take his personal vehicle and report to his new work location. Security escorted him from the facility.

When Murray reported to his new work location, his supervisor there introduced himself and stated that he had just found out about the transfer and offered Murray the option of staying for the remainder of the day or going home and returning on the following day.

Paez similarly testified that he was escorted (by Torres and another supervisor) to a meeting where Pillai and Hilber were waiting for him. Pillai told Paez that he was disappointed that this had been going on for two years and no one had reported anything. Paez was asked whether he lived in Connecticut and he replied in the affirmative. Paez was then informed that he was being transferred to Litchfield, and given the name of his new supervisor at that location. He was told that he was to report immediately. Paez informed the managers that he commut-

[10] Personnel records show that Paez, Murray and Encarnacion live in Connecticut: in New Haven, Bridgeport and Fairfield, respectively. Carlos Melendez, Carmelo Acevedo, and Amerigo Rodriquez live in Wingdale, New York and Vetrano lives in New Rochelle. Employees Julian Rock, Luis Muniz, and Porfirio Guzman-Martinez live in Yonkers. All the other OSP technicians that were employed at the Brush Avenue facility on May 5 live in the Bronx.

[11] In actuality, due to Roberts' work shift, he is required to travel from his home in Yonkers to the Bronx during the morning rush hour.

[12] Encarnacion had been characterized by his supervisor as a "Met"—that is, on the fence with regard to unionization.

ed with his wife, who he drove to the Bronx. Paez was told that he could go to his new location and check in, take the rest of the day off and return to the Bronx to pick up his wife. Paez was told that he was being given a "fresh start." Paez was escorted out of the facility by a safety manager. Paez also testified that he was informed by his new supervisor that he had just learned of the transfer.

Garcia's transfer meeting was with Grella and Kennedy. He recorded it on his cell phone. Upon learning that he was being transferred to Yorktown, Garcia complained that he had been trying to get into an inside plant job or somewhere where he was not in the field, indicating that Grella knew of such a request. Kennedy replied that neither he nor Grella had made the decision, but that it was made by the "senior management team." Grella also said the decisions were made, in some instances, because of location resulting in shorter commutes. Garcia stated that he lives "five minutes" from the Brush Avenue facility and stated that he felt he was being punished. Grella assured him that he had done nothing wrong and then further stated that the transfer had nothing to do with the investigation. Garcia raised the issue of whether he would simply refuse the transfer, which he assumed would result in his discharge. He was encouraged to accept the transfer and see how it worked out for him. At some point during this interview, Garcia began crying and was told he could go home for the remainder of the day. He was escorted from the facility by security.

On the following day, Garcia spoke again with both Kennedy and Grella and they provided him with certain transfer options, and he elected to go to Stamford, where he had previously worked on a temporary assignment.

Shortly after his transfer, Paez spoke with Hilber about the difficulties posed by his transfer because his wife, with whom he commuted, does not regularly drive. One day shortly after the transfer, Paez had arrived at work upset because his wife had to drive in the rain. His new supervisor, Ben Spielman, allowed Paez to take a personal day to return to Brush Avenue to speak with the HR department regarding his concerns. Prior to leaving the office he called Reyes, who was not in, and left a message. As Paez was proceeding toward home, where he planned to change prior to going to the Bronx, Spielman called him and told him that he could not go to the Bronx because as a Connecticut tech, he had to report to Connecticut HR. Spielman then gave Paez Hilber's phone number.

Paez then spoke with Hilber and requested that he be transferred to a location that would allow him to commute, at least in part, with his wife from their home in New Haven, Connecticut. According to Hilber, Paez contacted him and told him he was upset with the transfer because he had commuted to the Bronx with his wife and the transfer had a significant impact on his personal routine. According to Hilber, Paez stated that his wife was unable to drive. Hilber asked for medical documentation of that fact and Paez then acknowledged that while his wife did have a license, she did not drive. Hilber replied that if Paez supplied the requisite medical documentation, the situation would be reviewed. Hilber testified that Paez did not contact him after that conversation.

On May 9, Hilber sent an email to Grella, Kennedy, Reyes and Vice President of Technical Operations Lou Riley containing the following message:

> Bernie called me today and asked to move to a city environment . . . He asked about Bridgeport, Stamford, etc. Any thoughts?

Riley replied:

> Stamford could be a possibility its about 40 miles from his house. Norwalk is out Paul is there. Bridgeport is about 20 miles from his house.
>
> My concern is if we move him are we going to get the other guys calling. On Friday Paul Murray spoke with HR and went home because he was upset, is he waiting to see what happens with Bernie request![13]
>
> I don't think we should be giving into these guys they were moved for a reason . . . just my thoughts.
>
> Hilber replied that he would advise Paez that Litchfield would remain his assignment and he could post for other positions as they became available.

Garcia testified that during the time he worked at Stamford,[14] he contacted Stigers to see if he could keep his assigned vehicle at the Bronx depot when he was on stand-by and told that he could not. Garcia explained that a stand-by assignment meant he may be called into work at any time and that it would have been easier for him to respond to such calls if he could pick up his truck in the Bronx—"five minutes"—from his house and head out to a trouble spot from there. Stigers replied that Garcia could leave his truck in either Mamaroneck or Yonkers, but not the Bronx. Stigers testified that he had staff in the other locations, but the Bronx was out of his area.

III. ANALYSIS AND CONCLUSIONS

The 10(b) Issue

Respondent contends that the complaint allegations regarding the transfers of Lajara, Vetrano and Roberts should be dismissed prior to any consideration of the merits because the transfers of these individuals were not included in a timely filed charge. In this regard, Garcia did not amend his charge to include these individuals until he filed a second amended charge March 16, 2015, well after the 10(b) period had run. Counsel for the General Counsel argues that the amendment is not time-barred because the allegations are closely related to the allegations of the original charge, as they arose contemporaneously out of the same factual circumstances and as part of a single course of conduct. In support of the foregoing contentions, General Counsel relies primarily upon on *Redd-I*, 290 NLRB 1115 (1988).

Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge." Moreover, it is understood that the 10(b) period begins "when a party and 'clear and unequivocal' notice of a violation of the Act. *Broadway Wolkswagen*, 342 NLRB 1244, 1246 (2004), enfd. sub nom. *East Bay Auto-*

[13] Murray testified that, at the time, had been commuting with his wife and son, who attended day care in the Bronx.

[14] Garcia testified that in May 2015, he was "let go for medical reasons."

motive Council v. NLRB, 485 F.3d 628 99th Cir. 2007). Respondent argues that the record shows that Garcia was aware in May 2014 that Lajara, Vetrano, and Roberts had been transferred because he spoke with them and with other technicians about the transfers. Because no charge had been filed within six months of that date, Respondent argues, those aspects of the complaint as relates to these employees must be dismissed.

In agreement with the General Counsel, I conclude that the allegations of the complaint as they relate to Lajara, Vetrano, and Roberts are not time barred.

A complaint is not restricted to the precise allegations of a charge. A complaint may also allege matters related to and growing out of the charged conduct. *NLRB v. Fant Milling Co*., 360 U.S. 301, 309 (1959). The test is stated in *Redd-I*, supra at 1115–1116 (1988). In applying the applicable test the Board considers:

> If a charge was filed and served within six months after the violations alleged in the charge, the complaint (or amended complaint), although filed after the six months, may allege violations not alleged in the charge if (a) they are closely related to the violations named in the charge and (b) occurred within six months before the filing of the charge.

In evaluating whether the allegations are "closely related" under *Redd-I*, the Board considers:

> (1) Whether the untimely allegation involves the same legal theory as the timely charge;
>
> (2) Whether the untimely allegation arises from the same actual circumstances or sequence of events as the untimely charge; and
>
> (3) Whether the respondent would raise the same or similar defenses to the allegations.

See also *Nickles Bakery of Indiana*, 296 NLRB 927, 927–928 (1989).

In the instant case, the requirements of *Redd-I* and its progeny have been met. The amended charge as filed by Garcia contains allegations which involve the same legal theory as the allegations in the pending timely charge; the allegations arise from the same factual circumstances and sequence of events and (as will be discussed in further detail below) it is apparent that Respondent has raised a similar defense to the allegations. I conclude, therefore, that the allegations of the complaint as they relate to Lajara, Vetrano, and Roberts are not time barred.

The *Wright Line* Analysis

The General Counsel alleges that in the instant case, the Charging Parties and the three additional transferees are alleged to have engaged in both union activity and perceived union activity, and other concerted, protected conduct, and that this was a motivation behind Respondent's decision to involuntarily transfer them to other work locations. Respondent counters that the transfers had nothing to do with any real or perceived activities protected by Section 7 of the Act. Rather, the transfers were a legitimate, business-driven response to allegations of inappropriate conduct and unsafe work environment that were first brought to Respondent's attention by a letter sent by Attorney Laureano, and subsequently confirmed as a result of Respondent's investigation of the allegations. Respondent contends that the transfers of the six employees at issue here were not intended as a disciplinary measure, but were rather a component of the various measures taken to improve the workplace environment in the Bronx OSP department.

In cases turning on motivation, whether the allegations stem from Section 8(a)(3) or 8(a)(1) of the Act, the Board applies the analysis set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd., 62 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1989).

Under the foregoing analysis, the General Counsel has the initial burden to show that union activity was a substantial or motivating reason for the employer's action. "The elements commonly required to support a finding of unlawful motivation are union activity, the employer's knowledge of that activity and evidence of animus." *Hawaiian Dredging Construction Co*., 362 NLRB No. 10, slip op. at 3 (2015). The same analytical framework applies in those situations where the alleged discriminatees are alleged to have engaged in conduct otherwise protected by the Act. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Union or other Protected Activity and Knowledge (or Suspicion) Thereof

Knowledge of an employee's union, or other concerted protected activity may be established by reasonable inference. *Windsor Convalescent Center of North Long Beach*, 351 NLRB 975, 983 fn. 36 (2007), enfd. in relevant part 570 F.3d 354 (D. C. Cir 2009). It has also been established that circumstantial evidence including the timing of alleged discriminatory actions and the submission of pretextual reasons in support of it will support a finding of employer knowledge even in the absence of direct evidence of such. See *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1123 (2002), affd. 71 Fed.Appx. 441 (5th Cir. 2003). As is relevant to this case, the Board has held that a supervisor's knowledge of union activities is imputed to an employer absent a credible denial of such knowledge. See *State Plaza, Inc*., 347 NLRB 755, 756–757 (2006).

From the earliest days of the Board's jurisprudence, it has been recognized that an employer's transfer of employees may constitute an unfair labor practice when it is intended to dissipate or frustrate a union organizing drive or other concerted, protected activities on the part of employees. See e.g. *Empire District Electric Co*., 21 NLRB 605 (1940); *Lees-Bardner Co*., 40 NLRB 1173, 1174 (1942). In *Daylight Grocery Co*., 147 NLRB 733, 738 (1964), the most active union supporter, was transferred from the meat department of one of the respondent's stores to the grocery department of another store. The transfer did not involve any change in pay. Because there was proof of respondent's union animus, the administrative law judge found that the transfer of the employee to grocery work was in reprisal for his union activity, and presumably in the expectation that he would be less effective in promoting the union among the meat department employees in a different store. In *Triangle Publications, Inc*., 204 NLRB 651 (1973), enfd. 500 F.2d 597 (3d Cir. 1974), the Board agreed with the administrative law judge that the transfers of an employee from the respondent's New Jersey plant to its New York City plant to frustrate union

organizational efforts violated Section 8(a)(3) of the Act. In *Overload Hauling, Inc*., 194 NLRB 1146 (1972), the Board found that by transferring two employees "from Respondent's Ocoee, Florida, terminal to an operation at Immokalee, Florida, for a period of approximately 8 weeks in order to isolate said employees from other of Respondent's employees, and to prevent them from engaging in organizing activities in support of the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act."

In the present case, the evidence establishes that in 2013 and early 2014 Respondent made changes to terms and conditions of employment which employees perceived as being adverse to their interests. In November 2013, it was noted, as set forth in detail above, that "some of the usual union promoters" were asking questions about such changes. There is evidence that employees discussed these changes among themselves and, to a limited extent, with supervisory personnel; in particular – as the evidence reflects—by Murray. By 2014, Respondent was monitoring its workforce for signs of unionization. This is apparent from the internal memoranda distributed by Comstock to two Cablevision officials summarizing what Respondent knew about union activity in Newark, New Jersey and the Bronx. In this latter location, overt messages expressing support for unionization were reported as having been expressed at an employee-management meeting; one of which was left by Lajara and discussed at the meeting, with Vetrano' s apparent support. As Murray, testified, he was approached after this meeting by Kennedy, who had convened the meeting, asking what could be done better.

Other memoranda tracking prounion sentiment (or employee dissatisfaction with changes to terms and conditions of employment) ensued. On March 31, after a meeting with certain employees (only one of which—Garcia—is an alleged discriminatee here), Kennedy wrote that, "the group is ready to go to war. They said the CWA is not for them but the group is ready to go across the river to Local 3 IBEW." Another memorandum noted that members of the OSP who felt that they had supported the Cablevision during the prior campaign involving the CWA were being laughed at for being "company guys."

Respondent's awareness of union activity at its Bronx facility is further evinced by a ramping up of its efforts to educate its supervisory personnel on the "do's and don't's" and how to communicate its thoughts regarding unionization to employees.

At a meeting convened with supervisory personnel on April 3, Director of OSP Torres created a list reflecting the supervisors' assessment of employee union sentiments. All six of the alleged discriminatees were among the group of technicians identified as "Red Sox"—those who supported unionization.[15] Thus, not only is there testimony that the supervisors' knowledge of employee union sentiment was communicated to upper management at the time, but as a matter of law such knowledge is imputable to Respondent generally absent evidence to show to the contrary. *State Plaza*, supra; *Pinkerton's Inc*., 295 NLRB 538 (1989). Here, there is no such evidence to refute such a conclusion.

In addition to Respondent's suspicions and monitoring of union activity, as noted above, there is some evidence of more generalized concerted, protected conduct. Thus, Murray testified that he stated his concerns about the elimination of the Cash Balance plan to his supervisor Brady during a team meeting in about March. Garcia participated in an extended colloquy on this issue with Kapell during a March meeting of OSP technicians and supervisors. Even though these comments were made by a single employee, the fact that they occurred at general meetings of other workers and concerned themselves of matters of interest to all, supports the conclusion that such comments were of a concerted nature. *Whittaker Corp*., 289 NLRB 933, 934 (1988). For similar reasons, I additionally find that Lajara and Vetrano were engaged in concerted activity when they spoke at the March 12 meeting with Kennedy about safety issues—in particular the requirement that they perform electrical work which they felt they were not qualified to do.

Evidence of Animus

At the hearing in this matter, General Counsel requested that I admit into evidence a lengthy excerpt from the underlying transcript of the case heard by Judge Steven Fish in CSC Holdings, LLC and Cablevision Systems Corporation, Case 29–CA–097013 et al,[16] and consider his findings of fact and proposed conclusions of law to establish background evidence of union animus. I declined General Counsel's invitation to directly impute animus from the findings made by Judge Fish in that matter, and the proffered material was the rejected exhibit file.

Although some of the findings made by Judge Fish in that matter involve charges filed and alleged unfair labor practices occurring in the Bronx, most of them concern themselves with the CWA's organizing at Cablevision's Brooklyn facility and occurred some time prior to the events in question here. The hearing in that matter was based upon charges initially filed on January 24, 2013 and amended thereafter on various dates. The hearing on all the charges, amended charges and consolidated proceedings was conducted on numerous dates between September and December 2013. I further note that since the hearing in the instant matter, subsequent to the issuance of Judge Fish's decision, the Charging Party (the CWA) and the Respondent submitted a Motion for Approval of Non-Board Settlement Agreement and Remand to the Regional Director for Appropriate Action. This Motion was approved by unpublished Order of the Board dated July 14, 2016.[17] Thus, absent some unanticipated difficulty with the settlement, the Board will not be issuing a ruling on Judge Fish's recommended decision and order.

In sum, due to the passage of time, various differences in lo-

[15] If not known to the reader, it should be noted that the Bronx, where the Brush Avenue facility is located, is also where the Yankees have their home stadium. The Mets' home is in the borough of Queens, also part of New York City. It is also widely acknowledged that the Red Sox, housed in Boston Massachusetts, are traditional adversaries of the Yankees.

[16] Consolidated with Cases 02–CA–085811, 02–CA–090823, 29–CA–097557, 29–CA–100175, and 29–CA–110974.

[17] The Board's Order addressed the proposed settlement of two other administrative proceedings involving this same Respondent. These are 29–CA–134419 et al. (including 29–CA–135428, 29–CA–135822, 29–CA–136512, 29–CA–136759, 29–CA–137214, 29–CA–142425) and 29–CA–154544 (heard by the me).

cation and supervisory personnel, the nature of the union activity involved, the scope and nature of the alleged unfair labor practices, and the fact that it is unlikely that the Board will ever consider and issue a ruling in Case 29–CA–097013 et al., I find it appropriate to rely primarily upon the evidence adduced by the General Counsel in the instant matter to consider the elements of General Counsel's prima facie case.

Respondent argues that there is no evidence of animus here, and that whatever statements it disseminated to employees, or are reflected in their internal memoranda are statements that are not violative of the Act. Rather, it is argued that these statements disseminated to supervisory personnel were instructions as to how to comply with the Act and the material distributed to employees were well within the scope of permissible communications.

While it is the case that there are no independent allegations of Section 8(a)(1) here, the Board has noted that it has found that an employer's expression of views or opinions against a union, which cannot be deemed a violation in and of itself, can nonetheless be used as background evidence of antiunion animus on the part of the employer. See *Affiliated Foods, Inc*., 328 NLRB 1107 (1999); *Lampi, LLC*, 327 NLRB 222, enf. denied 240 F.2d 931 (11th Cir. 2001); *Gencorp*, 294 NLRB 717 fn. 1 (1989). For example, in *Overnite Transportation Co.*, 335 NLRB 372, 375 (2001), the Board found that a statement in a company handbook that "this Company values union-free working conditions" evinced an antiunion motive on the part of the respondent. Similarly in *Affiliated Foods, Inc*., supra, the Board found evidence of animus where the handbook described the respondent as a "union free organization" and expressed the view that "a union would be of no advantage to any of us … (and) would hurt the business on which we all depend for our livelihoods."

Here, I find that Respondent's letter to employees urging them to refrain from making a commitment to a union, which they may later regret, constitutes some evidence of its institutional anti-union position. This conclusion is buttressed by the various internal memoranda circulated among various supervisory and managerial personnel, as have been set forth above, as well as by the apparent vigilance with which union sentiment among employees was tracked, in particular in March and April, just prior to the transfers. I further infer animus from the seemingly trivial, but not insignificant, characterization of those employees believed to support unionization as "Red Sox," as is obvious, not members of the "home team."[18]

I further find evidence of animus in Vice President of Technical Operations Riley's response upon learning that Paez had requested a subsequent transfer to another location in Connecticut. Even though Riley had identified certain locations to which Paez could be relocated, he replied, "I don't think we should be giving into these guys [ ] they were moved for a reason." If openings were available at other facilities, the transfers were nondisciplinary in nature, and the purpose was to give employees a "fresh start" as has been asserted, it remains unexplained why Respondent could not make a reasonable attempt to accommodate an employee for whom the transfer caused family hardship. What was the "reason" for such an abject refusal? Absent any explanation, I conclude that the "reason" was a discriminatory one.

Other than the above, I find that there is little direct evidence which would demonstrate anti-union sentiment in the record. I find this less than surprising, however, given the extensive litigation to which the Respondent had been subject (as has been noted above) and my certainty that the various factors for establishing a prima facie case under Board law were certainly well known and studied by their highly able and talented representatives and, as the evidence reflects, communicated to their supervisory and managerial personnel.

Thus, it remains to be seen whether there is sufficient basis to further find, by inference, that there is animus toward union or other concerted, protected activities on the part of Respondent.

It is well established that a discriminatory motive may be inferred from circumstantial evidence and the record as a whole, and that direct evidence is not required. See *Sunshine Piping, Inc*., 351 NLRB 1371, 1390 (2007); *Tubular Corp. of America*, 337 NNLRB 99 (2001) (and cases cited therein). Such circumstantial evidence may include including suspicious timing, the lack of a plausible alternative or explanation or the finding that the reason given was pretextual. *Control Building Services, Inc.*, 337 NLRB 844, 845 (2002). Moreover, it has been held that when the evidence establishes that the employer's stated reasons for its actions are pretextual, that is either false or not relied upon, a respondent will fail by definition to show that it would have taken the same action absent the protected conduct. *Limestone Apparel Corp*., 255 NLRB 722, 722 (1981), enfd.705 F.2d 799 (6th Cir. 1982) *Golden State Foods Corp*., 340 NLRB 382, 385 (2003).

In addition to the direct evidence of animus noted above, I have concluded that in this instance, there is other circumstantial evidence which establishes a discriminatory motive as to the transfers of the six employees at issue here; in particular, evidence of pretext. The specifics of this discussion are set forth in detail below, where I evaluate the merits of Respondent's proffered defenses to the allegations of the charges.

Based upon the foregoing, I find that the General Counsel has established the elements of a prima facie case that the transfers of Garcia, Murray, Paez, Vetrano, Roberts and Lajara were motivated, at least in part, by their actual or perceived union or other concerted, protected activities in violation of Section 8(a)(1) and (3) of the Act. It now falls to Respondent to show, by a preponderance of the credible, probative evidence that it would have taken such action notwithstanding any conduct protected by the Act.

Respondent's Asserted Defenses

The Respondent argues in the first instance that the General Counsel failed to produce any evidence that Cablevision was aware that the three Charging Parties were union supporters.

[18] There are numerous Board cases where it has been found that the use of "code words" to designate union supporters constitutes evidence of unlawful motivation. See, e.g., *KinderCare Learning Centers*, 299 NLRB 1171, 1175 fn. 27 (1990); *Oak Ridge Hospital*, 270 NLRB 918, 919 (1984) ("troublemaker"); *Bronco Wine Co*., 256 NLRB 53, 54 (1981) ("attitude"); *Phillips Petroleum Co*., 339 NLRB 916, 924–925 (2003)("attitude," "malcontent" and "political activist").

Respondent further argues that events which occurred at organizing efforts which occurred more than two years prior to the relevant events here are not relevant. In this regard, it is argued that Cablevision was not aware of any protected activity allegedly engaged in by the six transferees at any point close in time to the May 2014 transfers.

These contentions are belied by the record evidence, set forth above, which shows that in April, within a month of their transfers, these individuals were identified as union supporters, or at the least as those who would be interested in unionization, by their immediate supervisors to company management. And, as discussed above, I have failed to find a sufficient evidentiary basis to conclude that knowledge of the union sentiments of the Charging Parties, and the three other individuals named in the complaint, could or should not be imputed to Cablevision management on whole.

Respondent's arguments generally are framed in terms of a more typical union campaign, where there may be outspoken supporters, or individuals believed to be the impetus for a nascent organizing drive. That is not what happened here: rather, it is apparent from the record evidence that based upon what had occurred previously in the Bronx, and at its Brooklyn facility, Respondent had been monitoring employee sentiment in an effort to forestall another organizing effort. Respondent cannot reasonably deny that this was the case as it is evident from the internal memoranda noted above that high-level managerial personnel were communicating with each other regarding the discussions held with employees regarding their dissatisfaction with changes to their terms and conditions of employment and views regarding unionization. Moreover, while none of the six employees at issue here were proven to be "ringleaders" of any organizing activity, discriminatory conduct which affects employees based upon their real or supposed union sympathies, no matter how embryonic, is conduct which violates the Act. There is no mandatory threshold for protection as long as it is shown that protected conduct was a substantial or motivating factor in an employer's decision. See, e.g., *McLane Western, Inc*., 251 NLRB 1396, 1398 fn. 11, 1403 (1980).

Respondent further argues that the General Counsel's reliance upon former Supervisor Reid's testimony was misplaced inasmuch as he was discharged by the company for misconduct in connection with allegations of wrongdoing by Felix, and that he is obviously a disgruntled former employee. I have carefully considered Reid's testimony and having observed his demeanor, do not agree with this assessment. While it may well be the case that Reid bears ill will toward his former employer, this was not apparent from the manner in which he testified which was free from exaggeration and, I note, largely corroborated by other testimony as well as the documents adduced through subpoena by the General Counsel. On whole, I find Reid's testimony to be worthy of credit. Respondent has pointed to no specific testimony which it contends should be rejected as abjectly false. Rather, Respondent attempts to characterize Reid's testimony in a light most favorable to its theory of the case insofar as it can be argued that it demonstrates a lack of knowledge or animus. In this regard, a fair argument can be made that Respondent has actually adopted Reid's testimony in significant part. Specific examples cited by Respondent include the meeting with Kennedy where Lajara acknowledging writing "IBEW" on the white board. Respondent does not contend that this did not occur, but relies upon Murray's testimony that Kennedy stated he did not care who wrote it. Respondent further argues that this conduct was too remote in time to prove discriminatory motive. Respondent also contends that Reid's testimony regarding the series of meetings held on April 3 and 4 fails to establish that he told Cablevision about or that the Company was otherwise aware of union support or activity by the six transferees. While Reid may not have testified that he specifically identified these individuals in his reports to Torres and Grella, as noted above, I have rejected Respondent's contention that it was unaware of the union sympathies of these employees.

Respondent generally argues that the events testified to by Reid, which occurred in early-April, are too remote in time to show that the May 7 transfers were motivated by them. In this regard, Respondent notes that the transfers did not take place until after Grella concluded the investigation prompted by the April 23 letter from attorney Laureano. As Respondent argues: "[t]he investigation is the significant intervening event that makes all of the prior events irrelevant in determining Cablevision's motive for the transfers." Respondent also relies upon Hilber's testimony that Cablevision did not consider whether any individual had engaged in protected activity in making the decision to transfer the six employees. Respondent advances several additional arguments. Initially, it points to the fact that other identified union supporters were not transferred; that employees who spoke out in meetings held in 2013 or otherwise expressed their concerns regarding their dissatisfaction with Cablevision's changes in terms and conditions of employment were not transferred; and that these statements, some occurring as early as November 2013 were too remote in time to establish a prima facie case.

With regard to Respondent's arguments regarding the selection of employees for transfer, I note that the Board has acknowledged that an employer's failure to discriminate against all union supporters does not establish that its actions toward the few were lawfully motivated. See, e.g., *George A. Tomasso Construction Corp*., 316 NLRB 738, 742 (1995), enfd. 100 F.3d 942 (2d Cir. 1996) ("an employer's failure to eliminate all union adherents does not prove that its actions towards a few were untainted by antiunion bias"); *Master Security Services*, 270 NLRB 543, 582 (1984).

As noted above, Respondent argues that its stated preference that the company remain nonunion does not constitute animus. In support of the foregoing contention, Respondent relies upon *E&I Specialists, Inc*., 349 NLRB446, 450 (2007), and *J. O. Mory, Inc*., 326 NLRB 604, 605 (1998).[19]

In *E&I Specialists*, supra, the complaint alleged that the respondent violated Section 8(a)(1) and (3) of the Act by refusing to consider for hire or hiring 23 individuals because of their union and/or concreted activity. The Board's dismissal of the complaint centered on the conclusion that the General Counsel had failed to provide evidence of animus sufficient to meet its

[19] The other cases relied upon by Respondent are largely distinguishable on their facts, which hold little application here.

initial burden of proof. In that instance the Board found that the only evidence of animus was that the individuals were not hired, that the respondent's hiring practices were generally standard and applied across the board, any deviances from that practice were minor and, moreover, that there was evidence negating any proof of animus. That is not the case here, where various factors suggest animus, as has been outlined above.

J. O. Mory, supra, similarly involved allegations of refusal to consider or failure to hire employees for discriminatory reasons, and the Board dismissed the complaint for a failure to prove animus. There, the Board relied upon the administrative law judge's finding that the respondent's hiring practices were facially valid and reasonably and plausibly connected to legitimate business concerns. It was also noted that the judge had found no independent evidence of animus, but had relied upon a single unexplained variance from its hiring practices to infer animus. The Board did not agree. The Board noted that the respondent had interviewed, hired, or attempted to hire known union supporters. More to the point made by Respondent, the Board also found that a strong preference to remain nonunion is, standing alone, not sufficient evidence of animus.

I find these cases to be distinguishable because, as has been noted above, I find that there is some independent evidence of animus from the undisputed facts which does not rely solely upon any inference I may otherwise draw. Moreover, as will be discussed below, I find that Respondent's proffered defense to the charges to be pretextual in large measure because Respondent has failed to show why the transfer of the six specific individuals at issue here was necessary or warranted to cure the devolution of workplace culture in the Bronx.

Respondent has advanced a number of arguments as to why there is no pretext here. In particular, it rebuts arguments advanced by the General Counsel that it sought to isolate union supporters; and asserts that its reasons for the transfers have been consistent and not shifting; the fact that other employees living outside the Bronx were not transferred is not evidence of pretext; that the logistics on the day of the transfers is not evidence of pretext; that certain headcount and certification arguments seemingly advanced by the General Counsel during the hearing do not evince pretext; that there was flexibility in making transfer decisions; and that the General Counsel's criticism of its legitimate decision is unfounded and it cannot prevail with mere suspicion or disagreement about the decision to transfer employees. In this regard I note that Board law is clear that an employer remains free to take nondiscriminatory actions with regard to their employees for good cause. Nevertheless, it is also well recognized that the Act recognizes that an employer may adopt the practice of "watchfully waiting" for a reason or pretext that can be seized upon as a means of eliminating or dissipating union supporters because of that support. See *Kut Rate Kid, and Shop Kwik*, 246 NLRB 106 (1970) (and cases cited therein); *NLRB v. Lipman Bros., Inc.*, 355 F.2d 15, 21 (1st Cir. 1966). That seems to me to be precisely what occurred in this case: Respondent was the beneficiary of fortuitous timing.

I note that there is no evidence of an official involuntary transfer policy and that the evidence of such transfers presented by Respondent is sparse, vague, anecdotal and fairly insignificant given the number of employees within the Cablevision footprint.[20] Nonetheless, the evidence is clear that Respondent was confronting serious allegations of workplace impropriety and had to take some actions to confront and cure the situation at the Brush Avenue depot. In this regard, I am cognizant that it is well established that the Board does not substitute its own business judgment for that of the employer in evaluating whether conduct was unlawfully motivated. Rather, the issue is whether the Respondent would have transferred the three charging parties and the three other employees named in the complaint absent their protected activity. *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996), affd. mem. 127 F.3d 34 (5th Cir. 1997). Here, I find that the evidence proffered in support of the various contentions raised by the Respondent is insufficient to meet its burden of proof to establish a nondiscriminatory motive.

I note that while Respondent has argued that the transfers stemmed from the conclusions drawn from the investigation from Felix's misconduct, Garcia was specifically told by Grella that his transfer had "nothing to do with the investigation." No explanation was offered by Grella during her testimony as to what else that rather obvious comment might have meant. While several of the transferees acknowledged either having seen or heard of misconduct, so too did over half of the OSP technicians interviewed. Garcia, in particular, described being subject to two incidents involving Felix, but the fact is that he was proactive in requesting a shift change to remove himself from that environment. As Grella was able to recall during her testimony and is otherwise shown by notes she took of these interviews, a number of employees who were not transferred described being subject to misconduct that they failed to report,[21] and others acknowledged having participated in activities viewed as inappropriate while at work.[22] I further note that among all of the named discriminatees, only Roberts worked the same shift as Felix.

Respondent's defense fails insofar as it attempts to portray its decision to transfer the six employees as a benign one, designed to minimize the adverse impact to those employees. Two employees, Murray and Paez, had family circumstances which made their transfers more difficult for them. Other commutes increased in length, in particular that of Garcia's, whose medical difficulties were known to Respondent, and who lived only 5 minutes from the Brush Avenue depot. And, while Respondent has maintained that the transfers were not meant to be

[20] When asked about involuntary transfers, Hilber responded: "we had a site closure out on the East End of Long Island. It was the SRC. We moved people to various other goals. We had—the old dispatch function was broken into, RCC and VDO, we moved people to the—we moved people from [Hauppauge] to Bethpage. And then we moved people from—I'm sorry—from [Hauppauge] to Melville and then we moved people later from Bethpage to [Hauppauge]. In response to an objection from General Counsel relating to Respondent's response to her subpoena on this issue, Respondent's counsel acknowledged that there previously had been only one involuntary transfer from the Bronx facility and the others involved transfers among facilities located on Long Island.

[21] According to Grella's testimony and notes, these include employees Mouzon, Gill, and Cespides.

[22] Grella's notes in this regard reference OSP technicians Acevedo, Borrero and Edwards, among others.

disciplinary in nature, it cannot be overlooked that the manner in which they were effectuated—immediately and with accompaniment from the premises by security and/or supervisory personnel—would seem to imply otherwise. Respondent has proffered neither evidence nor an explanation for any neutral, non-discriminatory reasons as to why such harsh measures were necessary or appropriate under the circumstances; particularly since the transferees were assured that they were not being disciplined. This suggests an attempt to remove the transferees from the facility so as to preclude them from discussing their circumstances with their coworkers.

The transferees were also precluded from returning to Brush Avenue, further suggesting an attempt to isolate them from remaining employees. Thus, when Paez requested a personal day to return to Brush Avenue to speak with HR, permission was initially granted and then denied by his new supervisor at Litchfield. Garcia was not allowed to park his truck at the Brush Avenue facility despite the fact it is mere minutes from his home, thereby increasing his response time to an emergency call.

In sum, I find that Respondent has failed to advance a credible, non-discriminatory reason for its selection of the six employees named in the complaint for involuntary transfer. Grella's testimony about the specifics of the selection process (as opposed to its ultimate conclusion and stated rationale), which has been set forth above, is unpersuasive. Grella initially testified that there was no specific conversation as to who lived where; she then said that they looked at everyone's addresses from the perspective of the Bronx to their home; she then testified that she didn't know and didn't believe they looked at everyone and that would have been "impossible." As Grella was the management representative primarily responsible for the investigation, and was an admitted participant in the selection process, I would expect her to have a more concrete, specific and informed basis to support Respondent's assertions as to the methodology by which they selected certain employees for transfer apart from others. Hilber, for his part, who testified that he participated in the decision-making "to some extent," shed no light on the reasons for the selection of the six employees other than vague assertions (again, conclusions but not evidence of process) that they did not want the resulting commutes to be too onerous. And, as it turns out, it was in various ways more onerous for the employees who testified here. Respondent counters that neither Paez nor Murray "presented a reason sufficient for Cablevision to abandon its efforts to improve the work environment by taking the various actions it had decided on, including transferring employees." Nonetheless, Respondent has failed to show or prove exactly why the specific transfer Murray, Paez (or any of the other four employees) was deemed essential to improving the work environment in the Bronx, especially since their involvement in any alleged misconduct by Felix was largely tangential, at most.[23]

In its posthearing brief, Respondent cites to Grella's testimony that the other managers involved in the decision to transfer the employees were Monopoli, Kennedy, Riley, Senior Vice President of Field Operations Mike Kaplan, Pillai, Hilber and Reyes. As discussed above, I find both Grella and Hilber to be less than persuasive in supporting Respondent's case, and it does not appear from their testimony that they had a definitive role. To the extent other managers had input into this decision, I draw an adverse inference from Respondent's failure to present testimony from these individuals. The Board has found that "when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *International Automated Machines,* 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d 720 (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center,* 348 NLRB 1016, 1022 (2006).[24] Moreover, an adverse inference is warranted by the unexpected failure of a witness to testify regarding a factual issue upon which the witness would likely have knowledge. See *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact).

Given the General Counsel's prima facie case, and the lack of a credible substantiated defense to rebut it, I find that the evidence supports the conclusion that the involuntary transfers of Garcia, Murray, Paez, Vetrano, Roberts and Lajara were because of their union or suspected union activity or other concerted, protected conduct. There is insufficient evidence to meet Respondent's burden of proof to show a nondiscriminatory motivation as to why these six individuals were selected for transfer. Rather, the single common denominator is their actual or perceived union support and other conduct protected by the Act.

CONCLUSIONS OF LAW

1. Respondent, CSC holdings, LLC and Cablevision Systems New York City Corporation is an employer in commerce within the meaning of Section 2(2), (6), and (7) of the Act

2. By involuntarily transferring Andres Garcia, Paul Murray, Bernard Paez, Mike Vetrano, Ezequiel Lajara and Wayne Roberts from its Brush Avenue facility to other work locations, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

[23] As Respondent notes, it did exhibit flexibility in its approach to alleged discriminatees Vetrano and Garcia who were allowed to move to locations other than those originally selected by Cablevision. The circumstances involving Garcia are set forth above. Those involving Vetrano are not fully set forth herein. Respondent asserts that its flexibility involving these two employees constitutes "powerful evidence for the absence of unlawful motive." Here, I cannot agree.

[24] Respondent has denied the agency status of various individuals named in the complaint. I find such denials to be frivolous. Under all the circumstances, I conclude that the individuals named as being part of the decision-making team as identified by Grella and set forth in Respondent's brief are all agents of Respondent.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Respondent should be required to offer Murray, Paez, Vetrano, Lajara and Roberts the opportunity to transfer back to its Brush Avenue facility, without loss of seniority or other benefits. As noted above, Garcia is no longer employed by Respondent.[25] Should he seek to be reemployed, he should be provided the opportunity to apply for employment at the Brush Avenue facility. Respondent should also be required to reimburse all of the alleged discriminatees for any increase in transportation or other costs associated with the involuntary transfers with interest computed as set forth in *New Horizons*, 283 NLRB 1173 (1987). Respondent should also be required to post the requisite Notice to Employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

The Respondent, CSC holdings, LLC and Cablevision Systems New York City Corporation, Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Involuntarily transferring its employees because of a belief that they have or because they have engaged in union or other concerted, protected activities.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the Board's Order, offer Paul Murray, Bernard Paez, Mike Vetrano, Ezequiel Lajara, and Wayne Roberts the opportunity to transfer back to the Respondent's Brush avenue facility without prejudice to their seniority or any or rights or privileges previously enjoyed. Should Andres Garcia wish to apply for employment with Respondent, he should be offered the opportunity to apply for employment at the Brush Avenue facility.

(b) Reimburse Garcia, Murray, Paez, Vetrano, Lajara, and Roberts for any increased commuting or other related costs associated with their involuntary transfers, with interest.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Bronx, New York copies of the attached notice marked "Appendix."[27] Copies of the notice, on forms provided by the Regional Director for Region [number], after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site and/or other electronic means, if the Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 7, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 23, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT involuntarily transfer our employees employees because they engage in or we believe that they engage in union or other concerted, protected activities;

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL offer Paul Murray, Bernard Paez, Mike Vetrano,

[25] The termination of Garcia's employment was not alleged as an unfair labor practice. Counsel for the General Counsel did not specifically address what remedy was being sought for Garcia under these circumstances.

[26] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Ezequiel Lajara, and Wayne Roberts the opportunity to transfer back to the our Brush Avenue facility without prejudice to their seniority or any or rights or privileges previously enjoyed. Should Andres Garcia wish to apply for employment with Respondent, he will be offered the opportunity to apply for employment at the Brush Avenue facility.

WE WILL Reimburse Garcia, Murray, Paez, Vetrano, Lajara, and Roberts for any increased commuting or other related costs associated with their involuntary transfers, with interest.

CSC HOLDINGS, LLC AND CABLEVISION SYSTEMS NEW YORK

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02–CA–138301 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.